

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Re:

Order Instituting Rulemaking into the Review of
the California High Cost Fund B Program

Rulemaking 06-06-028

(Filed June 29, 2006)

**COMMENTS OF OMNIPOINT COMMUNICATIONS, INC., dba T-MOBILE (U-3056-C)
ON THE ASSIGNED COMMISSIONER'S RULING REGARDING THE SCOPING AND
SCHEDULING OF PHASE II ISSUES**

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Date: November 9, 2007

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Pursuant to the Assigned Commissioner’s Ruling Regarding the Scoping and Scheduling of Phase II Issues, and the Assigned ALJ’s October 19, 2007 extension of time to file Opening Comments, Omnipoint Communications, Inc., dba T-Mobile (“T-Mobile”), respectfully submits the following comments.

I. INTRODUCTION

As noted in its earlier comments,¹ T-Mobile appreciates the Commission’s efforts to re-examine the CHCF-B Fund (the “Fund”). In light of the dramatic changes in the telecommunications industry over the past decade, as well as the Commission’s recent determination that there is competition in the voice communications markets for the major and mid-sized ILECs,² the need for significant modification (if not the elimination) of the Fund seems

¹ See Comments of Omnipoint Communications, Inc., dba T-Mobile (U-3056-C) on the Proposed Decision of Commissioner Chong Re Interim Opinion Adopting Reforms to the High Cost Fund-B Mechanism (August 24, 2007) at p. 11 (the “T-Mobile August 24, 2007 Comments”).

² See generally, Order Instituting Rulemaking on the Commission’s Own Motion to Assess and Revise the Regulation of Telecommunications Utilities in Rulemaking 05-04-005, Opinion, D. 06-08-030 (August 24, 2006) (“URF I”).

apparent to almost all stakeholders. To that end, the anticipated reduction in the overall size of the Fund – as well as the decrease in the surcharge imposed on consumers to support these subsidies – is a welcome first step.³ The challenge now, however, seems to be how to best promote the shared goal of providing universal service without inadvertently distorting competition in the voice communications market and the benefits that competition bring to consumers.⁴

Although the concept of carrier subsidies in the context of competitive markets still seems difficult to reconcile, to the extent the Fund is to be perpetuated, it is imperative that it be revised to function in a competitively neutral manner. Thus, as a preliminary matter, eligibility for participation in the Fund must be modified so that it does not categorically exclude carriers whose consumers are otherwise subject to the Commission's mandatory surcharges. To continue to force all consumers to subsidize ILEC operations is, simply put, inappropriate and inconsistent with both state and federal telecommunications policies.

³ In particular, T-Mobile applauds the recent Commission decision adopting a new "high cost" benchmark "of \$36 based on a standard of affordability by customers rather than system average costs of the utility." The new benchmark, which will be implemented in steps between now and January 1, 2009, will purportedly reduce CHCF-B claims by almost 75% and ultimately allow the Commission to reduce the CHCF-B surcharge by more than 60%. See D. 07-02-030 at p. 124, Finding of Fact 15 (noting approximately 74% reduction in claims) and Finding of Fact 17 (reduction in surcharge from 1.3% to .5%).

⁴ T-Mobile continues to maintain that sound public policy considerations favor the complete elimination of the Fund. As discussed in detail in its August 24, 2007 Comments, there does not appear to be any further justification for the Fund. This is especially evident given that, among other things, the Commission has (a) determined that there is competition in the voice communications market and (b) granted the ILECs pricing flexibility on the very services that once were the supposed source of the implicit subsidy the Fund was intended to replace. See T-Mobile August 24, 2007 Comments at pp. 3 - 5.

The elimination of the Fund would provide significant relief to consumers while at the same time eliminate the distortions created by providing subsidies to certain carriers for services which are, according to the Commission, subject to substantial competition. See e.g., URF I at p. 121 (referring to "the ubiquitous competitive presence of wireless carriers, CLEC wireline carriers and cable service providers present within its [Verizon California's] service territory."). Nonetheless, T-Mobile recognizes that the Commission has decided to maintain the Fund at least for the immediate future.

In addition, T-Mobile believes that the Fund should be refocused on low-income customers with a goal of achieving targeted service penetration goals. The Commission, aided by the efforts of carriers, has long met the overall goal of providing service to 95% of Californians. In fact, there is no indication that the Fund has affected that overall penetration rate in any way over these past 10-plus years. On the other hand, providing service to low-income individuals (regardless of where they may reside) has been more challenging. The Fund could and should be refocused to meet those legitimate needs.

The Assigned Commissioner's Ruling also raises a number of questions relating to reverse auctions. Although T-Mobile believes that reverse auctions provide a more efficient way to determine the appropriate level of subsidy support for voice communications than the current Cost Proxy Model ("CPM"),⁵ the details of those procedures depend in great deal on which carriers are eligible to participate in the Fund and the underlying goals of the program. At a minimum, however, the reverse auction should optimize the use of Fund subsidies for targeted consumers while providing all eligible carriers with incentives to provide service in affected areas. T-Mobile submits that this might best be accomplished by designing a simplified reverse auction mechanism which assumes that no subsidies will be available pending a request by a service provider for support in a geographic area. That request, in turn, would initiate an auction for all interested carriers. In this way, the Fund can be efficiently administered and subsidy amounts can be rationally determined.

⁵ See T-Mobile August 24, 2007 Comments at p. 11. n.35 (citing Comments of T-Mobile USA, Inc. at pp. 3-7 (May 31, 2007), *In re High Cost Universal Service Support*, FCC Docket No. 05-337 ("Reverse auctions would distribute support to the carrier(s) offering to provide service for the least amount of universal service support, thereby driving all carriers toward efficient operations, minimizing the burden on the high-cost fund and restraining its growth..."))

Finally, T-Mobile recognizes and generally supports the Commission's attempt to limit the use of cost proxy models and the use of the HM 5.3 Model to update cost proxies. If, however, the goal of the Commission in this phase of the proceeding is to identify geographic areas where the *ILECs' forward-looking costs* of providing voice communications is less than the \$36 benchmark, the HM 5.3 would likely prove to be a valuable tool. What is less clear, however, is whether that information should dictate what is considered to be a high cost area or whether it should be used to determine subsidy amounts. In addition, the use of the HM 5.3 Model raises certain concerns since, among other things, it is designed for landline networks which bear little or no relation to the cost of providing service for alternative carriers like wireless.⁶ Moreover, a reverse auction in a competitive market potentially obviates the needs for cost proxies since the ability of the most efficient carrier to provide service - not the forward-looking or historical embedded ILEC costs of providing service - will dictate subsidy amounts.

In brief, the Commission has the unique opportunity in Phase II to further reduce the costs of telecommunications services to all consumers, promote the affordability of service to low-income consumers and remove artificially created and significant barriers to robust competition in the voice communications market. This is an opportunity which should not be missed since it will likely have a significant impact on the character of the California telecommunications market in the coming decades.

⁶ The Commission acknowledges that "...the ideal solution would be to identify costs based on the most competitive technology currently available" but then resorts to the wireline model on the basis that "the resources are not currently available to identify and measure those costs." See D. 07-09-020 at pp. 108-109. Reverse auctions, however, unlike any type of cost modeling, at least allow subsidies to be determined based on the least-cost technology available.

II. COMMENTS

A. The Fund Must be Competitively Neutral

As an initial matter, it is imperative that the Fund be maintained (if at all) on a competitively neutral basis. If not, the subsidies provided to the ILECs will only further distort the competitive market and force consumers to subsidize the operations of particular technology without regard to whether that technology is efficient or economically viable in the current market.

The concept of competitive neutrality is well-recognized by the Commission, especially in this context. For example, in setting up the Fund, the Commission was specifically charged with developing a “competitively neutral and broadbased program ... [for] telephone corporations serving areas where the cost of providing services exceeds rates charged by providers ...”⁷ This in turn reflects the Legislature’s declared goal of removing “barriers to open and competitive markets” and encouraging “the development and deployment of new technologies and the equitable provision of services in a way which efficiently meets consumer need and encourages the ubiquitous availability of a wide choice of state-of-the art services.”⁸

The Fund, however, even as modified in D. 07-09-020, is inconsistent with general Commission policy which encourages competition on a competitively neutral basis.⁹ For example, wireless carriers are currently precluded by definition from participating in the Fund since Commission rules require that they first be designated as carriers of last resort (“COLRs”) and provide, among other things, Lifeline rates/services to eligible consumers as part of their

⁷ Public Utilities Code § 739.3.

⁸ California Public Utilities Code §§ 709(c) and (g).

⁹ See e.g., Decision 96-10-066, Appendix B, Rule 3.A.4 and 5 (the Commission has declared policies “... to provide consumers with the ability to choose among competing basic service carriers regardless of the technologies employed by the carriers who provide basic service...” and “...to promote deployment of advanced telecommunications technology to all customer segments...”).

“basic service” offering.¹⁰ Wireless carriers, however, are explicitly excluded from providing Lifeline services and thus seem to be prohibited from participating in the Fund (although their consumers are required to contribute).¹¹ This is inconsistent with the well-established Commission policies discussed above as well as the policies of the FCC.¹²

The definition of “basic service” also includes sixteen (16) additional mandatory elements,¹³ many of which are either based on a landline model (e.g., references to “local exchanges”, “flat” or “measured” service, free directory listings) or are otherwise anachronistic in today’s telecommunications market (e.g., one time free billing adjustments for unauthorized charges¹⁴). There is simply no reason to maintain these requirements nor are they necessarily relevant to the service options available to consumers. Indeed, the Commission itself has recognized that the concept of “basic service” may no longer be applicable in today’s market.¹⁵

That is not to say that there should not be some minimum guidelines for what constitutes basic voice communications in the state. Such guidelines, however, need to be flexible in order to accommodate the various technologies used to provide voice communications to consumers (some of which are difficult to predict at this time). Although the following is not meant to be an

¹⁰ See D. 96-10-066.

¹¹ In Decision 96-10-066 – and again in Decision 00-10-028 – the Commission declined to allow CMRS carriers to provide ULTS on the bases that CMRS services were *then priced* at levels that were not affordable to low-income citizens and that cellular services were not considered “residential.” In D. 00-10-028, the Commission questioned whether CMRS should continue to be categorically excluded from providing ULTS and called for the review of that issue. See, e.g., D. 00-10-028, Conclusion of Law 167 (calling for a workshop to prepare a proposal for CMRS to provide ULTS). That review has not yet occurred, although the Commission has indicated its intention to review the matter in a latter phase of R. 06-05-028. For purposes of this proceeding, however, either the ULTS requirement for participation in the Fund should be eliminated (at least for wireless carriers) or ULTS should be redesigned to make it operational on a competitively neutral basis.

¹² For example, the current Fund appears to be inconsistent with the competitive neutrality principles set forth in the Telecommunications Act of 1996. See, e.g., *In re Western Wireless Corporation Petition for Preemption*, FCC 00-309, File No. CWO-98-90 (rel. August 28, 2000) (universal fund which is available only to ILECs would likely violate competitive neutrality provisions of the Telecommunications Act of 1996).

exhaustive list, such services would most likely include the ability to make and receive calls, the ability to access operator services, the ability to access interexchange services (or otherwise make long-distance calls), free and unlimited access to 911/E911 (consistent with applicable state and/or FCC standards), and access to customer care.¹⁶ A carrier that provides such services would otherwise be eligible to participate in the Fund and consumers could then freely choose among those carriers to select the service that best fits their particular needs.

B. The Fund Should be Refocused to Meet the Needs of Low-Income Consumers

Whatever benefits the Fund may have brought to California, it has not apparently had any recognizable affect on the overall penetration rate goals sought by the Commission. In fact, according to the Commission, the overall penetration rate in the early 1990's – *prior to the creation of the Fund* – was at or above 95%.¹⁷ The overall penetration rate actually dropped somewhat (albeit incrementally) between 1993 and 1999 and then subsequently increased from 1999 to 2002. Since that time, it has decreased again to the last reported level of approximately 96%.¹⁸

By way of contrast, penetration rates among low-income households have increased significantly since the implementation of lifeline assistance in 1984.¹⁹ However, it is T-Mobile's

¹³ Decision 96-10-066, Appendix B, Rule 4.B.

¹⁴ General Order 168 now explicitly sets out the obligation of all carriers with respect to unauthorized charges on telecommunications invoices.

¹⁵ See URF I at p. 75 (“Concepts like “Basic Local Exchange Service,” “long distance service,”...make little sense in an era dominated by telecommunications sold through bundled services.”)

¹⁶ In a truly competitive market, it is difficult to understand the justification for not allowing full pricing flexibility to the ILECs or, conversely, for otherwise allowing price caps to be used to justify the continued need for carrier subsidies.

¹⁷ See California Public Utilities Commission, *Report to the California Legislature, Universal Telephone Service to Residential Customers*, pg. 6, Chart 1 (June 2006)

¹⁸ Id.

¹⁹ See id. at p.7, Chart 2 (penetration rate among low-income households increased from 82.9% in 1984 to 92.5% in 2004).

understanding that low-income consumers continue to constitute one of the more underserved market segments the state.²⁰ Thus, consistent with the overall Commission goal of universal service, T-Mobile suggests that the Fund be used only to provide subsidies to carriers that provide voice communication services to low-income consumers who cannot otherwise afford service in high cost areas.

C. Reverse Auctions Should Rationalize the Subsidy Process

The Assigned Commissioner's Ruling raises numerous specific issues regarding the development of a reverse auction mechanism, many of which will be addressed below. In addition, the actual mechanics of a reverse auction will ultimately be addressed in technical workshops. In the meantime, however, T-Mobile would like to offer some general guidelines which it believes will simplify and streamline any future process. In particular, the reverse auction mechanism should be guided by some basic principles:

- Minimize total subsidy outlays (and thus surcharges on consumers);
- Provide incentives for carriers to provide (or continue to provide) voice communications services in affected areas;
- Establish efficient procedures for setting subsidy amounts; and
- Promote the efficient delivery of voice communications to high cost areas.

To that end, T-Mobile suggests that the Commission consider establishing a reverse auction mechanism which assumes no subsidies in a given geographic area pending a request for subsidies from a carrier that already provides, or agrees to provide, service in that area. The request will establish that the carrier is willing and able to provide voice communications to all consumers in the area at a rate that exceeds the \$36 benchmark. Other carriers (who are also

²⁰ See e.g., The Office of Ratepayer Advocates Review of the California High Cost Fund B: A \$55 Million Subsidy Program for Telephone Companies (March 22, 2004) at p. 17.

willing to act as “COLRs” in the area)²¹ would then, at their discretion, participate in an auction with the carrier that agrees to provide service at the rate closest to \$36 setting the subsidy amount.²² The difference between the “lowest” rate and \$36 would establish the subsidy amount for that area.²³ Any eligible carrier would then be entitled to the subsidy although the low-cost/prevaling carrier would be obligated to provide service in the targeted area.

This type of mechanism would obviate the need for cost proxy models, simplify the process and ensure that inefficient, high-cost technologies are not perpetuated at the expense of California consumers through inflated subsidies. It also would prevent a carrier from trying to inappropriately drive down the subsidy amount since the prevailing carrier would otherwise be obligated to provide service. Although the details of such a reverse auction can be further developed in workshops, this concept seems to further the goals of the Commission without overburdening either consumers or carriers of the Commission staff with potentially protracted, resource-intensive cost studies.

D. Cost Proxy Models - HM 5.3 Model

Except to the extent that they are used as a surrogate cost model as a matter of public policy, cost proxy models would seem to have at best limited value in a competitive voice communications market. Moreover, as noted above, the use of reverse auctions should obviate the need to update CPMs to determine what areas are “high cost” or what the appropriate subsidy should be. In addition, the current CPMs, as well as the HM 5.3 Model, are both based on

²¹ The concept of a “COLR” also requires reexamination in a competitive market.

²² If no other carrier participated in the auction, the subsidy amount would be determined by the difference between the applicant’s rate and the \$36 benchmark, although in no event would the subsidy exceed the difference between the \$36 benchmark and the current (or adjusted) CPM for that area.

²³ If a carrier is willing to provide service at a rate less than the \$36, no subsidy would be available for that area.

landline technology. Thus, they do not necessarily provide any particularly relevant data regarding the costs of service for competitive providers like wireless or VoIP or cable.

Nonetheless, to the extent the Commission wants to determine the forward-looking ILEC costs for providing local voice communications, the HM 5.3 Model should prove useful. In fact, what T-Mobile understands to be the predecessor of the HM 5.3 Model (i.e., the HAI 5.0a) was used, in part, by the Federal Communication Commission (“FCC”) to determine federal universal high cost support for non-rural carriers.²⁴ The use of costing models, however, is generally controversial and almost always resource intensive. Thus, the Commission must also consider what parties would be able to marshal the resources to substantively engage in such a proceeding.

Even if such a cost proceeding could be undertaken, however, it is unclear how such data could be used. For example, if a reverse auction mechanism along the lines suggested above were to be implemented, there would be no particular need for the modeling since the forward-looking costs of ILEC service would not be dispositive of either the subsidy amount or what constitutes a “high cost” area. Even if a different reverse auction mechanism were used, the cost proxies do not seem particularly helpful in setting subsidy amounts.

If, on the other hand, the cost proxy models are used to identify “high cost areas”, it seems that there are simpler and more efficient ways to accomplish that goal. For example, the Fund currently identifies nine-hundred and ninety-one (991) CBGs with CPMs of \$36 or greater.²⁵ Even without reexamining every element of the initial study, it is well-recognized that

²⁴ See *Federal-State Joint Board on Universal Service, Fifth Report and Order*, CC Docket Nos. 96-45, 97-160, 13 FCC Rcd 21323 (1998) (Commission model platform combined elements from each of the three models under consideration including the BCPM, Version 3.0 (BCPM); the HAI Model, Version 5.0a (HAI); and (3) the Hybrid Cost Proxy Model, Version 2.5 (HCPM)).

²⁵ See California High Cost Fund B High Cost Census Block Groups, Volume One: The cost of

the cost of switching (i.e., generally one of the key ILEC cost drivers for providing local service) has decreased dramatically in the past ten years.²⁶ Thus, it would not seem unreasonable to limit potential high cost areas to those 991 CBGs using the current CPMs (which were based on 1994 data) or using the current CPMs discounted by some Commission-determined factor to account for decreased costs in the past decade. In either event, there is no obvious reason to subject all the stakeholders to the resource demands of a cost proceeding when there are, as discussed above, more efficient and appropriate alternatives available to determine high cost areas and subsidy amounts.

III. CONCLUSION

As noted above, T-Mobile applauds the Commission's decision to reduce the CHCF-B Fund and to initiate further proceedings to determine how the Fund can be further reformed to make it competitively neutral and reflective of the current telecommunications market. Although T-Mobile urges the Commission to consider the eventual elimination of the Fund,²⁷ it suggests that to the extent the Fund continues to have a place in the telecommunications market, it should be: (a) modified to ensure it functions on a competitively neutral basis, (b) refocused on the

Providing Service to High cost Census Block Groups by County, A Report Prepared by the Public Programs Branch of the CPUC (May 8, 1998). T-Mobile notes that the 991 CBGs are apparently based on the 1990 Census. However, it has come to T-Mobile's attention that a significant number of those CBGs apparently no longer exist as a result of the 2000 Census. T-Mobile is further exploring this issue.

²⁶ See e.g., AUS Telephone Plant Index, described in general at <http://www.ausinc.com/pub-telephone.html>; see also, *In the Matter of Federal-State Joint Board on Universal Service Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Docket Nos. 96-45 and 97-160, *Tenth Report and Order* (rel. October 21, 1999).

²⁷ T-Mobile also notes that it would be helpful if the Commission could clarify how the Fund is to operate during this interim period when no alternate mechanisms (e.g., reverse auctions, redefinition of eligible carriers) have been established. For example, are the ILECs entitled to make claims based on the transitional benchmarks and the historic CPMs? Will claims be held in abeyance during this interim period?

needs of low-income consumers and (c) reformed to recognize the competitive and operational advantages of setting subsidies through the use of reverse auctions as set forth above.

Respectfully submitted this 9th day of November, 2007 at San Francisco, California.

WILSON & BLOOMFIELD LLP

By /s/

Leon M. Bloomfield

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dba T-Mobile

CERTIFICATE OF SERVICE

I, Richard M. Marshall, certify that the following is true and correct:

I am employed in the City of Oakland, County of Alameda, California, am over the age of eighteen years, and am not a party to the within entitled cause. My business address is 1901 Harrison Street, Suite 1620, Oakland, CA 94612.

On November 9, 2007, I served a copy of:

**COMMENTS OF OMNIPOINT COMMUNICATIONS, INC., dba T-MOBILE (U-3056-C)
ON THE ASSIGNED COMMISSIONER'S RULING REGARDING THE SCOPING AND
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attached hereto, on all parties to the attached service list for R.06-06-028 by sending electronic copies via email.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on November 9, 2007 at Oakland, California.

/s/
Richard M. Marshall

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